

105TH CONGRESS
1ST SESSION

S. 237

To provide for retail competition among electric energy suppliers for the benefit and protection of consumers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 1997

Mr. BUMPERS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for retail competition among electric energy suppliers for the benefit and protection of consumers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Electric Consumers Protection Act of 1997”.

6 (b) TABLE OF CONTENTS.—The table of contents is
7 as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Severability.

TITLE I—RETAIL COMPETITION

Sec. 101. Definitions.
 Sec. 102. Mandatory retail access.
 Sec. 103. Aggregation.
 Sec. 104. Prior implementation.
 Sec. 105. State regulation.
 Sec. 106. Stranded cost recovery.
 Sec. 107. Multistate utility company stranded costs.
 Sec. 108. Universal service.
 Sec. 109. Public benefits.
 Sec. 110. Renewable energy.
 Sec. 111. Transmission.
 Sec. 112. Cross-subsidization.
 Sec. 113. Competitive generation markets.
 Sec. 114. Nuclear decommissioning costs.
 Sec. 115. Tennessee Valley Authority.
 Sec. 116. Enforcement.

TITLE II—PUBLIC UTILITY HOLDING COMPANIES

Sec. 201. Repeal of the Public Utility Holding Company Act of 1935.
 Sec. 202. Definitions.
 Sec. 203. Exemptions.
 Sec. 204. Federal access to books and records.
 Sec. 205. State access to books and records.
 Sec. 206. Affiliate transactions.
 Sec. 207. Clarification of regulatory authority.
 Sec. 208. Effect on other regulation.
 Sec. 209. Enforcement.
 Sec. 210. Savings provision.
 Sec. 211. Implementation.
 Sec. 212. Resources.

TITLE III—PUBLIC UTILITY REGULATORY POLICIES ACT

Sec. 301. Definition.
 Sec. 302. Facilities.
 Sec. 303. Contracts.
 Sec. 304. Savings clause.
 Sec. 305. Effective date.

TITLE IV—ENVIRONMENTAL PROTECTION

Sec. 401. Study.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that:

3 (a) Congress has the authority to enact laws,
 4 under the Commerce Clause of the United States

1 Constitution, regarding the wholesale and retail gen-
2 eration, transmission, distribution, and sale of elec-
3 tric energy in interstate commerce.

4 (b) It is in the public interest that consumers
5 receive reliable and inexpensive electric service and
6 competition among electric suppliers can produce
7 these benefits.

8 (c) Electric utility companies that prudently in-
9 curred costs pursuant to a regulatory structure that
10 required them to provide electricity to consumers
11 should not be penalized during the transition to
12 competition.

13 (d) Consumers will not benefit from the intro-
14 duction of competition among electric suppliers if
15 certain suppliers have undue market power.

16 (e) It is important to encourage conservation
17 and the use of renewable resources to reduce reli-
18 ance on fossil fuels and to promote domestic energy
19 security.

20 (f) The transition to electric competition should
21 not degrade reliability nor cause consumers to lose
22 electric service.

1 **SEC. 3. SEVERABILITY.**

2 If any provision of this Act, or the application of such
 3 provision to any person or circumstance, shall be held in-
 4 valid, the remainder of the Act, and the application of
 5 such provision to persons or circumstances other than
 6 those as to which it is held invalid, shall not be affected
 7 thereby.

8 **TITLE I—RETAIL COMPETITION**

9 **SEC. 101. DEFINITIONS.**

10 For purposes of this title:

11 (1) The term “affiliate” shall have the same
 12 meaning given the term in section 202(10) of this
 13 Act.

14 (2) The term “aggregator” means any person
 15 that purchases or acquires retail electric energy on
 16 behalf of two or more consumers.

17 (3) The term “Commission” means the Federal
 18 Energy Regulatory Commission.

19 (4) The term “consumer” means a person who
 20 purchases retail electric energy.

21 (5) The term “corporation” means any corpora-
 22 tion, joint-stock company, partnership, association,
 23 cooperative, municipal utility, business trust, orga-
 24 nized group of persons, whether incorporated or not,
 25 or a receiver or receivers, trustee or trustees of any
 26 of the foregoing.

1 (6) The term “large hydroelectric facility”
2 means a facility which has a power production ca-
3 pacity, which together with any other facilities lo-
4 cated at the same site is greater than 80 megawatts.

5 (7) The terms “local distribution facilities” and
6 “retail transmission facilities” mean facilities used
7 to provide retail electric energy to consumers.

8 (8) The term “mitigation” means any widely
9 accepted business practice used by a retail electric
10 energy provider to dispose of or reduce uneconomic
11 assets or costs.

12 (9) The term “person” means an individual or
13 corporation.

14 (10) The term “public utility holding company”
15 shall have the same meaning given the term in sec-
16 tion 202(6) of this Act.

17 (11) The term “renewable energy” means elec-
18 tricity generated from solar, wind, waste, except for
19 municipal solid waste, biomass, hydroelectric or geo-
20 thermal resources.

21 (12) The term “Renewable Energy Credit”
22 means a tradable certificate of proof that one unit
23 (as determined by the Commission) of renewable en-
24 ergy was generated by any person.

1 (13) The term “retail electric competition”
2 means the ability of each consumer in a particular
3 State to purchase retail electric energy from any
4 person seeking to sell electric energy to such
5 consumer.

6 (14) The term “retail electric energy” means
7 electric energy and ancillary services sold for ultimate
8 consumption.

9 (15) The term “retail electric energy provider”
10 means any person who distributes retail electric energy
11 to consumers regardless of whether the consumers
12 purchase such energy from the provider or
13 another supplier.

14 (16) The term “retail electric energy supplier”
15 means any person which sells retail electric energy
16 to consumers.

17 (17) The term “State” means any State or the
18 District of Columbia.

19 (18) The term “State regulatory authority”
20 means any State agency, including a municipality,
21 which has ratemaking authority with respect to the
22 rates of any retail electric energy provider and the
23 Tennessee Valley Authority.

1 (19) The term “transmission system” means all
 2 facilities, including federally-owned facilities, trans-
 3 mitting electricity in interstate commerce in a par-
 4 ticular region, including those located in the State of
 5 Texas and those providing international interconnec-
 6 tions, but does not include local distribution and re-
 7 tail transmission facilities as defined by the Commis-
 8 sion.

9 (20) The term “wholesale electric energy”
 10 means electric energy and related services sold for
 11 resale.

12 (21) The term “wholesale electric energy sup-
 13 plier” means any person which sells wholesale elec-
 14 tric energy.

15 **SEC. 102. MANDATORY RETAIL ACCESS.**

16 (a) CUSTOMER CHOICE.—Beginning on December
 17 15, 2003 each consumer shall have the right to purchase
 18 retail electric energy from any person, subject to any limi-
 19 tations imposed pursuant to section 105(a) of this Act,
 20 offering to sell retail electric energy to such consumer.

21 (b) LOCAL DISTRIBUTION AND RETAIL TRANS-
 22 MISSION FACILITIES.—Beginning on December 15, 2003
 23 all persons seeking to sell retail electric energy shall have
 24 reasonable and nondiscriminatory access, on an unbundled

1 basis, to the local distribution and retail transmission fa-
2 cilities of all retail electric energy providers and all related
3 services.

4 **SEC. 103. AGGREGATION.**

5 Subject to any limitations imposed pursuant to sec-
6 tion 105(a) of this Act, a group of consumers or any per-
7 son acting on behalf of such group may purchase or ac-
8 quire retail electric energy for the members of the group
9 if they are located in a State or States where there is retail
10 electric competition.

11 **SEC. 104. PRIOR IMPLEMENTATION.**

12 (a) STATE ACTION.—A State or State regulatory au-
13 thority, if authorized under State law, may require retail
14 electric energy providers selling retail electric energy to
15 consumers in such State to provide reasonable and non-
16 discriminatory access, on an unbundled basis, to its local
17 distribution and retail transmission facilities and all relat-
18 ed services to competing retail electric energy suppliers
19 prior to December 15, 2003.

20 (b) NONREGULATED PROVIDERS.—A retail electric
21 energy provider not subject to the jurisdiction of a State
22 regulatory authority may elect to provide reasonable and
23 nondiscriminatory access, on an unbundled basis, to its
24 local distribution and retail transmission facilities and all

1 related services to competing retail electric energy suppli-
2 ers prior to December 15, 2003.

3 (c) GRANDFATHER.—Legislation enacted by a State
4 or a regulation issued by a State regulatory authority
5 prior to January 30, 1997 which has the effect of requir-
6 ing retail electric competition on or before December 15,
7 2003, shall be deemed to be in compliance with the re-
8 quirements of sections 102, 106 and 107 of this Act, for
9 so long as such retail electric competition exists.

10 **SEC. 105. STATE REGULATION.**

11 (a) STATE REQUIREMENTS.—Nothing in this Act
12 shall prohibit a State or a State regulatory authority from
13 imposing requirements on persons seeking to sell retail
14 electric energy to consumers in that State which are in-
15 tended to promote the public interest, including require-
16 ments related to reliability and the provision of informa-
17 tion to consumers and other retail electric suppliers. Any
18 such requirements must be applied on a nondiscriminatory
19 basis and may not be used to exclude any class of potential
20 suppliers, such as retail electric energy providers, from the
21 opportunity to sell retail electric energy.

22 (b) MAINTENANCE OF STATE AUTHORITY.—Nothing
23 in this Act is intended to prohibit a State from enacting

1 laws or imposing regulations related to retail electric en-
 2 ergy service that are consistent with the requirements of
 3 this Act.

4 (c) CONTINUED STATE AUTHORITY OVER DISTRIBUTION.—A State or State regulatory authority may con-
 5 tinue to regulate local distribution and retail transmission
 6 service currently subject to State regulation in any manner
 7 consistent with this Act.

9 **SEC. 106. STRANDED COST RECOVERY.**

10 (a) APPLICATION FOR RECOVERY.—A retail electric
 11 energy provider that was subject to the jurisdiction of a
 12 State regulatory authority prior to the date of enactment
 13 of this Act may submit an application to the State regu-
 14 latory authority seeking calculation of its total stranded
 15 costs in that State if:

16 (1) subsequent to January 30, 1997, the State
 17 regulatory authority has issued a regulation or the
 18 State has enacted legislation requiring retail electric
 19 competition which does not provide for the full re-
 20 covery of stranded costs; or

21 (2) the retail electric energy provider's cus-
 22 tomers have access to retail competition as a result
 23 of the requirements of section 102 of this Act.

24 (b) CALCULATION OF STRANDED COSTS.—

1 (1) If a State regulatory authority calculates
2 the applicant's stranded costs pursuant to subsection
3 (a), the authority shall choose, within six months
4 after the receipt of the application, between the cal-
5 culation methodologies described in subsection (f) of
6 this section.

7 (2) If a State regulatory authority does not cal-
8 culate the retail electric energy provider's total
9 stranded costs, the Commission shall calculate the
10 provider's stranded costs using the methodology de-
11 scribed in subsection (f)(2) of this section.

12 (c) NONREGULATED UTILITIES.—A retail electric en-
13 ergy provider that is not subject to regulation by a State
14 regulatory authority prior to the date of enactment of this
15 Act may calculate the amount of its total stranded costs
16 pursuant to either methodology described in subsection (f)
17 of this section.

18 (d) RIGHT OF RECOVERY.—A retail electric energy
19 provider shall be entitled to full recovery of its stranded
20 costs, over a reasonable period of time, through a non-
21 bypassable Stranded Cost Recovery Charge imposed on its
22 distribution and retail transmission customers.

23 (e) PROHIBITION ON COST-SHIFTING.—No class of
24 consumers in a State shall be assessed a Stranded Cost
25 Recovery Charge that a State regulatory authority or the

1 Commission, whichever is applicable, determines is in ex-
2 cess of the class' proportional responsibility for the retail
3 electric energy provider's costs that existed prior to the
4 implementation of retail electric competition in such State.

5 (f) CALCULATION OF STRANDED COSTS.—For pur-
6 poses of this section and section 107 of this Act, the term
7 “stranded costs” means either (1) all legitimate, prudently
8 incurred and verifiable investments made by a retail elec-
9 tric energy provider in generation assets, including bind-
10 ing power purchase contracts, and related regulatory as-
11 sets which would have been recoverable but for the imple-
12 mentation of retail electric competition following the date
13 of enactment of this Act, and which cannot be reasonably
14 mitigated or (2) if a retail electric energy provider sells
15 all of its generating facilities, the difference between the
16 book value of such facilities less the amount received from
17 their sale. Nothing in this title is intended to permit a
18 reassessment of prudence with regard to the incurrence
19 of costs related to a particular generating facility or con-
20 tract in the event a State Regulatory Authority or the
21 Commission has already made a legally binding determina-
22 tion.

1 **SEC. 107. MULTISTATE UTILITY COMPANY STRANDED**
2 **COSTS.**

3 (a) **LIMITATION ON OBLIGATION.**—Customers of a
4 retail electric energy provider that serves customers in
5 more than one State or that is affiliated with another re-
6 tail electric energy provider shall only be responsible for
7 stranded costs associated with retail electric competition
8 in the State or area in which such customers are located.

9 (b) **REGIONAL GENERATING FACILITIES.**—

10 (1) The consent of Congress is given for the
11 creation of a regional board if—

12 (A) each State regulatory authority regu-
13 lating an affiliate of a public utility holding
14 company with affiliate retail electric energy pro-
15 viders serving customers in more than one state
16 elects to join such a board;

17 (B) an affiliate of the public utility holding
18 company owns and/or operates a generating fa-
19 cility and sells power from that facility to two
20 or more affiliates of the same holding company
21 and did not sell retail electric energy prior to
22 January 30, 1997 (hereinafter referred to as
23 the “wholesale generating company); and

24 (C) the public utility holding company no-
25 tifies each State regulatory authority which reg-
26 ulates a retail electric energy provider affiliated

1 with the holding company that it intends to
2 seek recovery of the stranded costs associated
3 with the generating facility or facilities (de-
4 scribed in subsection (b)(1)(B)) owned by the
5 wholesale generating company affiliated with
6 such holding company.

7 (2) The regional board shall be formed if each
8 State regulatory authority elects to create the board
9 within six months after receiving the notification de-
10 scribed in subsection (b)(1)(C). If such elections are
11 not made within the requisite time period, the Com-
12 mission shall assume the responsibilities of the board
13 as described in this section.

14 (3) The regional board shall have one year after
15 the date it is formed to calculate, on a unanimous
16 basis, the stranded costs associated with the gener-
17 ating facility which is the subject of the proceeding
18 in accordance with the definition contained in sec-
19 tion 106(f) of this Act and to allocate such costs
20 among the retail electric energy provider affiliates of
21 the public utility holding company on a just and rea-
22 sonable and nondiscriminatory basis.

23 (4) If the regional board fails to make either or
24 both determinations, as described in subsection
25 (b)(3) in the requisite time period, the Commission

1 shall make the determination or determinations that
2 have yet to be made.

3 (5) After its level of stranded costs is deter-
4 mined pursuant to this subsection, the wholesale
5 generating company affiliate of the holding company
6 shall be entitled to fully recover its stranded costs,
7 over a reasonable period of time, from the retail
8 electric energy provider affiliates to which it sells
9 electric energy pursuant to the procedures estab-
10 lished by this subsection.

11 (6) A retail electric energy provider's stranded
12 cost payment obligations pursuant to this subsection
13 shall be deemed stranded costs for the purposes of
14 sections 106 and 107 of this Act.

15 **SEC. 108. UNIVERSAL SERVICE.**

16 (a) SERVICE OBLIGATION.—After December 15,
17 2003, each retail electric energy provider shall be obligated
18 to sell retail electric energy to, or purchase retail electric
19 energy on behalf of, any consumer in a particular State
20 served by such retail electric energy provider if the State
21 regulatory authority located in such State has determined
22 that such consumer does not have reasonable access to
23 competing retail electric energy suppliers and the
24 consumer has not chosen an alternative supplier.

25 (b) COMPENSATION.—

1 (1) If the retail electric energy provider per-
2 forming the service described in subsection (a) is
3 subject to State regulatory authority regulation of
4 its distribution services, such provider shall be com-
5 pensated at a just and reasonable rate established by
6 such regulatory authority.

7 (2) If the retail electric energy provider per-
8 forming the service described in subsection (a) is not
9 subject to distribution service regulation by a State
10 regulatory authority, such provider shall establish
11 the appropriate level of compensation.

12 (3) A State or a State regulatory authority, if
13 authorized by the State, may impose a
14 nonbypassable Universal Service Charge imposed on
15 the distribution and retail transmission customers of
16 all retail electric energy providers in such State to
17 fund all or part of the compensation provided in
18 subsections (b)(1) and (b)(2).

19 (4) A State regulatory authority or the retail
20 electric energy provider, if it establishes its own level
21 of compensation pursuant to subsection (b)(2), may
22 require the consumer receiving retail electric energy
23 pursuant to subsection (a) to pay for all or part of
24 the compensation provided in subsections (b)(1) and
25 (b)(2).

1 **SEC. 109. PUBLIC BENEFITS.**

2 Nothing in this Act shall prohibit a State or State
3 regulatory authority from assessing charges on consumers
4 to fund public benefit programs such as those designed
5 to aid low-income energy consumers, promote energy re-
6 search and development or achieve energy efficiency and
7 conservation.

8 **SEC. 110. RENEWABLE ENERGY.**

9 (a) **MINIMUM RENEWABLE REQUIREMENT.**—Begin-
10 ning on January 1, 2004 and each year thereafter, every
11 retail electric energy supplier shall submit to the Commis-
12 sion Renewable Energy Credits in an amount equal to the
13 required annual percentage of the total retail electric en-
14 ergy sold by such supplier in the preceding calendar year.

15 (b) **STATE RENEWABLE ENERGY PROGRAMS.**—Noth-
16 ing in this section shall be construed to prohibit any State
17 or any State regulatory authority from requiring addi-
18 tional renewable energy generation in that State under
19 any program adopted by the State.

20 (c) **REQUIRED ANNUAL PERCENTAGE.**—Beginning in
21 calendar year 2003, the required annual percentage for
22 each retail electric energy supplier shall be 5 percent.
23 Thereafter, the required annual percentage for each such
24 supplier shall be 9 percent beginning in calendar year
25 2008 and 12 percent beginning in calendar year 2013.

1 (d) SUBMISSION OF CREDITS.—A retail electric en-
 2 ergy supplier may satisfy the requirements of subsection
 3 (a) through the submission of—

4 (1) Renewable Energy Credits issued by the
 5 Commission under this section for renewable energy
 6 sold by such supplier in such calendar year.

7 (2) Renewable Energy Credits issued by the
 8 Commission under this section to any other retail
 9 electric energy supplier for renewable energy sold in
 10 such calendar year by such other supplier and ac-
 11 quired by such retail electric energy supplier.

12 (3) Any combination of the foregoing.

13 A Renewable Energy Credit that is submitted to the
 14 Commission for any year may not be used for any other
 15 purposes thereafter.

16 (e) ISSUANCE OF RENEWABLE ENERGY CREDITS.—

17 (1) The Commission shall establish by rule
 18 after notice and opportunity for hearing but not
 19 later than one year after the date of enactment of
 20 this Act, a National Renewable Energy Trading Pro-
 21 gram to issue Renewable Energy Credits to retail
 22 electric suppliers. Renewable Energy Credits shall be
 23 identified by type of generation and the State in
 24 which the facility is located. Under such program,
 25 the Commission shall issue—

1 (A) one-half of one Renewable Energy
 2 Credit to any retail electric energy supplier who
 3 sells one unit of renewable energy generated at
 4 a large hydroelectric facility;

5 (B) one Renewable Energy Credit to any
 6 retail electric energy supplier who sells one unit
 7 of renewable energy generated at a facility,
 8 other than a large hydroelectric facility, built
 9 prior to the date of enactment of this Act; and

10 (C) two Renewable Energy Credits to any
 11 retail electric supplier who sells one unit of re-
 12 newable energy generated at a facility, other
 13 than a large hydroelectric facility, built on or
 14 after the date of enactment of this Act.

15 (2) The Commission shall impose and collect a
 16 fee on recipients of Renewable Energy Credits in an
 17 amount equal to the administrative costs of issuing,
 18 recording, monitoring the sale or exchange, and
 19 tracking such Credits.

20 (f) SALE OR EXCHANGE.—Renewable Energy Credits
 21 may be sold or exchanged by the person issued or the per-
 22 son who acquires the Credit. A Renewable Energy Credit
 23 for any year that is not used to satisfy the minimum re-
 24 newable sales requirement of this section for that year
 25 may not be carried forward for use in another year. The

1 Commission shall promulgate regulations to provide for
2 the issuance, recording, monitoring the sale or exchange,
3 and tracking of such Credits. The Commission shall main-
4 tain records of all sales and exchanges of Credits. No such
5 sale or exchange shall be valid unless recorded by the
6 Commission.

7 (g) RULES AND REGULATION.—The Commission
8 shall promulgate such rules and regulations as may be
9 necessary to carry out this section, including such rules
10 and regulations requiring the submission of such informa-
11 tion as may be necessary to verify the annual electric gen-
12 eration and renewable energy generation of any person ap-
13 plying for Renewable Energy Credits under this section
14 or to verify and audit the validity of Renewable Energy
15 Credits submitted by any person to the Commission.

16 (h) ANNUAL REPORTS.—The Commission shall gath-
17 er available data and measure compliance with the re-
18 quirements of this section and the success of the National
19 Renewable Energy Trading Program established under
20 this section. On an annual basis not later than May 31
21 of each year, the Commission shall publish a report for
22 the previous year that includes compliance data, National
23 Renewable Energy Trading Program results, and steps
24 taken to improve the Program results.

1 (i) SUNSET.—The requirements of this section shall
2 cease to apply on December 31, 2019.

3 **SEC. 111. TRANSMISSION.**

4 (a) TRANSMISSION REGIONS.—Within two years
5 after the date of enactment of this Act, the Commission
6 shall establish the broadest feasible transmission regions
7 and designate an Independent System Operator to manage
8 and operate the transmission system in each region begin-
9 ning on December 15, 2003. In establishing transmission
10 regions and designating Independent System Operators
11 the Commission shall give deference to Independent Sys-
12 tem Operators approved by the Commission prior to the
13 date of enactment of this Act, if it would be consistent
14 with the requirements of this section.

15 (b) INDEPENDENT SYSTEM OPERATORS.—A person
16 designated as an Independent System Operator shall not
17 be subject to the control of—

18 (1) any person owning any transmission facili-
19 ties located in the region in which the Independent
20 System Operator will operate; or

21 (2) any retail electric energy supplier selling re-
22 tail electric energy to consumers in the region in
23 which the Independent System Operator will oper-
24 ate.

1 (c) REGIONAL TRANSMISSION OVERSIGHT BOARD.—

2 After the Commission has designated an Independent Sys-
 3 tem Operator for a particular transmission region, each
 4 State that is part of the transmission region established
 5 by the Commission may elect to join a Regional Trans-
 6 mission Oversight Board. If all States within the trans-
 7 mission region so elect within 180 days after the Commis-
 8 sion designates an Independent System Operator for the
 9 transmission region, the Board shall be formed.

10 (d) BOARD MEMBERSHIP.—The Regional Trans-
 11 mission Oversight Board shall be composed of an equal
 12 number of members from each State which is a member
 13 of the Board. The Board shall prescribe its own rules for
 14 organization, practice and procedure for carrying out the
 15 functions assigned by this section.

16 (e) TRANSMISSION REGULATION.—

17 (1) If a Regional Transmission Oversight Board
 18 is formed, it shall have the same authority as the
 19 Commission has pursuant to Sections 205, 206, 211,
 20 and 212 of the Federal Power Act (16 U.S.C. 824d,
 21 824e, 824j, and 824k), as amended by this Act, with
 22 respect to the transmission of electric energy in
 23 interstate commerce by the Independent System Op-
 24 erator within the transmission region designated by
 25 the Commission. Any actions taken by such Board

1 pursuant to this subsection shall be consistent with
2 Commission precedent.

3 (2) If a Regional Transmission Oversight Board
4 is not formed for a particular region, the Commis-
5 sion shall continue to have authority over the trans-
6 mission of electric energy in interstate commerce by
7 the Independent System Operator within the trans-
8 mission region designated by the Commission.

9 (3) The Commission shall have authority over
10 the transmission of electric energy in interstate com-
11 merce between two or more transmission regions
12 designated by the Commission.

13 (4) Section 212(f) of the Federal Power Act
14 (16 U.S.C. 824k(f) shall be repealed on the date the
15 Tennessee Valley Authority becomes a retail electric
16 energy supplier.

17 (5) Section 212(g) of the Federal Power Act
18 (16 U.S.C. 824k(g) is amended by adding “prior to
19 December 15, 2003” immediately following “utili-
20 ties”.

21 (6) The prohibition outlined by Section 212(h)
22 of the Federal Power Act (16 U.S.C. 824k(h)) shall
23 be inapplicable either—

1 (A) in any situation where a retail electric
 2 energy supplier is seeking access to a trans-
 3 mission facility for the purpose of selling retail
 4 electric energy to a consumer located in a State
 5 that has authorized retail electric competition
 6 prior to December 15, 2003; or

7 (B) in all cases beginning on December 15,
 8 2003.

9 (f) RULES.—On or before January 1, 2002, the Com-
 10 mission shall issue binding rules for it and the various Re-
 11 gional Transmission Boards, governing oversight of the
 12 Independent System Operators, designed to promote
 13 transmission reliability and efficiency and competition
 14 among retail and wholesale electric energy suppliers, in-
 15 cluding rules related to transmission rates that inhibit
 16 competition and efficiency.

17 **SEC. 112. CROSS-SUBSIDIZATION.**

18 Nothing in this Act is intended to permit retail elec-
 19 tric energy providers from recovering in its distribution
 20 and retail transmission rates any costs associated with un-
 21 regulated activities.

22 **SEC. 113. COMPETITIVE GENERATION MARKETS.**

23 (a) MERGERS.—

1 (1) Section 203(a) of the Federal Power Act
 2 (16 U.S.C. 824b(a)) is amended by adding “includ-
 3 ing the promotion of competitive wholesale and retail
 4 electric generation markets,” immediately following
 5 “public interest”.

6 (2) Add the following new subsections at the
 7 end of Section 203 of the Federal Power Act (16
 8 U.S.C. 824b):

9 “(c) ACQUISITION OF NATURAL GAS UTILITY COM-
 10 PANY.—No public utility shall acquire the facilities or se-
 11 curities of a natural gas utility company unless the Com-
 12 mission finds that such acquisition is in the public inter-
 13 est.

14 “(d) DEFINITION.—For purposes of this section, the
 15 term “natural gas utility company” means any company
 16 that owns or operates facilities used for the transmission
 17 at wholesale, or the distribution at retail (other than the
 18 distribution only in enclosed portable containers) of natu-
 19 ral or manufactured gas for heat, light, or power.”.

20 (b) MARKET POWER.—The Commission shall take
 21 such actions as it determines are necessary to prohibit any
 22 retail electric energy supplier or retail electric energy pro-
 23 vider or any affiliate thereof, from using its ownership or
 24 control of resources to maintain a situation inconsistent

1 with effective competition among retail and wholesale elec-
 2 tric suppliers.

3 **SEC. 114. NUCLEAR DECOMMISSIONING COSTS.**

4 To ensure safety with regard to the public health and
 5 safe decommissioning of nuclear generating units, retail
 6 and wholesale electric energy suppliers and retail electric
 7 energy providers owning nuclear generating units prior to
 8 the date of enactment of this Act shall be entitled and
 9 obligated to recover, from their customers, all reasonable
 10 costs associated with Federal and State requirements for
 11 the decommissioning of such nuclear generating units.

12 **SEC. 115. TENNESSEE VALLEY AUTHORITY.**

13 (a) COMPETITION IN SERVICE TERRITORY.—Not-
 14 withstanding any other provision of law, all retail and
 15 wholesale electric energy suppliers shall have the right to
 16 sell retail and wholesale electric energy to consumers that
 17 currently purchase retail or wholesale electric energy ei-
 18 ther directly from the Tennessee Valley Authority or per-
 19 sons purchasing electric energy from the Tennessee Valley
 20 Authority, beginning on December 15, 2003 or, if the Ten-
 21 nessee Valley Authority, in its capacity as a State regu-
 22 latory authority, chooses an earlier date, such earlier date.

23 (b) ABILITY TO SELL ELECTRIC ENERGY.—Notwith-
 24 standing any other provision of law, the Tennessee Valley
 25 Authority shall be able to sell retail electric energy and

1 wholesale electric energy to any person, subject to any
2 State restrictions imposed pursuant to section 105 of this
3 Act, beginning on the date retail electric competition in
4 the Authority's service territory, as described in subsection
5 (a), becomes effective.

6 (c) PROTECTION OF UNITED STATES TREASURY.—

7 This section shall be inapplicable if the Secretary of En-
8 ergy, in consultation with the Office of Management and
9 Budget, determines that the application of this section is
10 contrary to the financial interest of the United States.

11 **SEC. 116. ENFORCEMENT.**

12 (a) VIOLATION OF THE ACT.—If any individual or
13 corporation or any other retail electric energy supplier or
14 provider fails to comply with the requirements of this Act,
15 any aggrieved person may bring an action against such
16 entity to enforce the requirements of this Act in the appro-
17 priate Federal district court.

18 (b) STATE OR COMMISSION ACTION.—Notwithstand-
19 ing any other provision of law, any person seeking redress
20 from an action taken by a State Regulatory Authority, the
21 Commission or a regulatory board pursuant to this Act
22 shall bring such action in the appropriate circuit of the
23 United States Court of Appeals.

1 **TITLE II—PUBLIC UTILITY HOLDING**
2 **COMPANIES**

3 **SEC. 201. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
4 **PANY ACT OF 1935.**

5 The Public Utility Holding Company Act of 1935, as
6 amended, 15 U.S.C. 79 et seq., is hereby repealed, effec-
7 tive one year from the date of enactment of this Act.

8 **SEC. 202. DEFINITIONS.**

9 For purposes of this title:

10 (1) The term “person” means an individual or
11 company.

12 (2) The term “company” means a corporation,
13 joint stock company, partnership, association, busi-
14 ness trust, organized group of persons, whether in-
15 corporated or not, or a receiver or receivers, trustee
16 or trustees of any of the foregoing.

17 (3) The term “electric utility company” means
18 any company that owns or operates facilities used
19 for the generation, transmission or distribution of
20 electric energy for sale.

21 (4) The term “gas utility company” means any
22 company that owns or operates facilities used for
23 distribution at retail (other than the distribution
24 only in enclosed portable containers) of natural or
25 manufactured gas for heat, light or power.

1 (5) The term “public utility company” means
2 an electric utility company or gas utility company
3 but does not mean a qualifying facility as defined in
4 the Public Utility Regulatory Policies Act of 1992,
5 or an exempt wholesale generator or a foreign utility
6 company defined by the Energy Policy Act of 1992.

7 (6) The term “public utility holding company”
8 means (A) any company that directly or indirectly
9 owns, controls, or holds with power to vote, 10 per-
10 cent or more of the outstanding voting securities of
11 a public utility company or of a holding company of
12 any public utility company; and (B) any person, de-
13 termined by the Commission, after notice and oppor-
14 tunity for hearing, to exercise directly or indirectly
15 (either alone or pursuant to an arrangement or un-
16 derstanding with one or more persons) such a con-
17 trolling influence over the management or policies of
18 any public utility or holding company as to make it
19 necessary or appropriate for the protection of con-
20 sumers with respect to rates that such person be
21 subject to the obligations, duties, and liabilities im-
22 posed in this title upon holding companies.

23 (7) The term “subsidiary company” of a hold-
24 ing company means (A) any company 10 percent or
25 more of the outstanding voting securities of which

1 are directly or indirectly owned, controlled, or held
2 with power to vote, by such holding company; and
3 (B) any person the management or policies of which
4 the Commission, after notice and opportunity for
5 hearing, determines to be subject to a controlling in-
6 fluence, directly or indirectly, by such holding com-
7 pany (either alone or pursuant to an arrangement or
8 understanding with one or more other persons) so as
9 to make it necessary for the protection of consumers
10 with respect to rates that such person be subject to
11 the obligations, duties, and liabilities imposed in this
12 title upon subsidiary companies of holding compa-
13 nies.

14 (8) The term “holding company system” means
15 a holding company together with its subsidiary com-
16 panies.

17 (9) The term “associate company” of a com-
18 pany means any company in the same holding com-
19 pany system with such company.

20 (10) The term “affiliate” of a company means
21 any company 5 percent or more of whose outstand-
22 ing voting securities are owned, controlled, or held
23 with power to vote, directly or indirectly, by a com-
24 pany.

1 (11) The term “voting security” means any se-
2 curity presently entitling the owner or holder thereof
3 to vote in the direction or management of the affairs
4 of a company.

5 (12) The term “Commission” means the Fed-
6 eral Energy Regulatory Commission.

7 (13) The term “State Commission” means any
8 commission, board, agency, or officer, by whatever
9 name designated, of a State, municipality, or other
10 political subdivision of a State that under the law of
11 such State has jurisdiction to regulate public utility
12 companies.

13 **SEC. 203. EXEMPTIONS.**

14 (a) **FEDERAL AND STATE AGENCIES.**—No provision
15 of this title shall apply to: (1) the United States, (2) a
16 State or any political subdivision of a State, (3) any for-
17 eign governmental authority not operating in the United
18 States, (4) any agency, authority, or instrumentality of
19 any of the foregoing, or (5) any officer, agent, or employee
20 of any of the foregoing acting as such in the course of
21 his official duty.

22 (b) **UNNECESSARY PROVISIONS.**—The Commission,
23 by rule or order, may conditionally or unconditionally ex-
24 empt any person or transaction, or any class or classes

1 of persons or transactions, from any provision or provi-
 2 sions of this title or of any rule or regulation thereunder,
 3 if the Commission finds that regulation of such person or
 4 transaction is not relevant to the rates of a public utility
 5 company. The Commission shall not grant such an exemp-
 6 tion, except with regard to section 204 of this Act, unless
 7 all affected State commissions consent.

8 (c) RETAIL COMPETITION.—The provisions of this
 9 title shall not apply to a holding company and every asso-
 10 ciate company of such holding company if the Commission
 11 certifies that the retail customers of every public utility
 12 subsidiary of such holding company have access to alter-
 13 native sources of electricity in a manner that no longer
 14 requires regulation of the holding company for the protec-
 15 tion of consumers.

16 **SEC. 204. FEDERAL ACCESS TO BOOKS AND RECORDS.**

17 (a) PROVISION OF BOOKS AND RECORDS.—Every
 18 holding company and associate company thereof shall
 19 maintain, and make available to the Commission, such
 20 books, records, accounts, and other documents as the
 21 Commission deems relevant to costs incurred by a public
 22 utility company that is an associate company of such hold-
 23 ing company and necessary or appropriate for the protec-
 24 tion of consumers with respect to rates.

1 (b) EXAMINATION OF BOOKS AND RECORDS.—The
 2 Commission may examine the books and records of any
 3 company in a holding company system, or any affiliate
 4 thereof, as the Commission deems relevant to costs in-
 5 curred by a public utility company within such holding
 6 company system and necessary or appropriate for the pro-
 7 tection of consumers with respect to rates.

8 (c) PROTECTED INFORMATION.—No member, offi-
 9 cer, or employee of the Commission shall divulge any fact
 10 or information that may come to his knowledge during the
 11 course of examination of books, accounts, or other infor-
 12 mation as hereinbefore provided, except insofar as he may
 13 be directed by the Commission or by a court.

14 **SEC. 205. STATE ACCESS TO BOOKS AND RECORDS.**

15 (a) PROVISION OF BOOKS AND RECORDS.—Every
 16 holding company and associate company thereof, shall
 17 maintain, and make available to each State Commission
 18 regulating the rates of any public utility subsidiary of such
 19 holding company, such books, records, accounts, and other
 20 documents as the State Commission deems relevant to
 21 costs incurred by a public utility company that is an asso-
 22 ciate company of such holding company and necessary or
 23 appropriate for the protection of consumers with respect
 24 to rates.

1 (b) PROTECTED INFORMATION.—No member, officer,
 2 or employee of a State Commission shall divulge any fact
 3 or information that may come to his knowledge during the
 4 course of examination of books, accounts, or other infor-
 5 mation as hereinbefore provided, except insofar as he may
 6 be directed by the State Commission or a court.

7 **SEC. 206. AFFILIATE TRANSACTIONS.**

8 (a) INTERAFFILIATE TRANSACTIONS.—Both the
 9 Commission, with regard to wholesale rates, and State
 10 Commissions, with regard to retail rates, shall have the
 11 authority to determine whether a public utility company
 12 may recover in rates any costs of goods and services ac-
 13 quired by such public utility company from an associate
 14 company after July 1, 1994, regardless of when the con-
 15 tract for the acquisition of such goods and services was
 16 entered into.

17 (b) ASSOCIATE COMPANIES.—Both the Commission,
 18 with regard to wholesale rates, and State Commissions,
 19 with regard to retail rates, shall have the authority to de-
 20 termine whether a public utility company may recover in
 21 rates any costs associated with an activity performed by
 22 an associate company.

23 (c) INTERAFFILIATE POWER TRANSACTIONS.—

1 (1) Each State Commission shall have the au-
2 thority to examine the prudence of a wholesale elec-
3 tric power purchase made by a public utility, which
4 is not an associate company of a public utility hold-
5 ing company, providing retail electric service subject
6 to regulation by the State Commission.

7 (2) Each State Commission shall have the au-
8 thority to examine the prudence of a wholesale elec-
9 tric power purchase made by a public utility, which
10 is an associate company of a public utility holding
11 company, providing retail electric service subject to
12 regulation by the State Commission, provided that
13 the costs related to such purchase have not been al-
14 located among two or more associated companies of
15 such public utility holding company, by the Commis-
16 sion prior to the date of enactment and there is no
17 subsequent reallocation after the date of enactment.

18 **SEC. 207. CLARIFICATION OF REGULATORY AUTHORITY.**

19 No public utility which is an associate company of
20 a holding company may recover in rates from wholesale
21 or retail customers any costs not associated with the provi-
22 sion of electric service to such customers, including those
23 direct and indirect costs related to investments not associ-
24 ated with the provision of electric service to those cus-
25 tomers, unless the Commission, with regard to wholesale

1 rates, or a State Commission, with regard to retail rates,
2 explicitly consents.

3 **SEC. 208. EFFECT ON OTHER REGULATION.**

4 Nothing in this Act shall preclude a State Commis-
5 sion from exercising its jurisdiction under otherwise appli-
6 cation law to protect utility consumers.

7 **SEC. 209. ENFORCEMENT.**

8 The Commission shall have the same powers as set
9 forth in Sections 306 through 317 of the Federal Power
10 Act (16 U.S.C. 825d–825p) to enforce the provisions of
11 this Act.

12 **SEC. 210. SAVINGS PROVISION.**

13 Nothing in this title prohibits a person from engaging
14 in activities in which it is legally engaged or authorized
15 to engage on the date of enactment of this title provided
16 that it continues to comply with the terms of any author-
17 ization, whether by rule or by order.

18 **SEC. 211. IMPLEMENTATION.**

19 The Commission shall promulgate regulations nec-
20 essary or appropriate to implement this title not later than
21 six months after the date of enactment of this title.

1 **SEC. 212. RESOURCES.**

2 All books and records that relate primarily to the
3 function hereby vested in the Commission shall be trans-
4 ferred from the Securities and Exchange Commission to
5 the Commission.

6 **TITLE III—PUBLIC UTILITY REGULATORY**
7 **POLICIES ACT**

8 **SEC. 301. DEFINITION.**

9 For purposes of this title, the term “facility” means
10 a facility for the generation of electric energy or an addi-
11 tion to or expansion of the generating capacity of such
12 a facility.

13 **SEC. 302. FACILITIES.**

14 Section 210 of the Public Utility Regulatory Policies
15 Act of 1978 (16 U.S.C. 824a–3) shall not apply to any
16 facility which begins commercial operation after the effec-
17 tive date of this title, except a facility for which a power
18 purchase contract entered into under such section was in
19 effect on such effective date.

20 **SEC. 303. CONTRACTS.**

21 After the effective date of this title or after the date
22 on which retail electric competition, as defined in title I
23 of this Act, is implemented in all of its service territories,
24 whichever is earlier, no public utility shall be required to
25 enter into a new contract or obligation to purchase or sell

1 electric energy pursuant to section 210 of the Public Util-
2 ity Regulatory Policies Act of 1978.

3 **SEC. 304. SAVINGS CLAUSE.**

4 Notwithstanding sections 302 and 303, nothing in
5 this title shall be construed:

6 (a) As granting authority to the Commission, a
7 State regulatory authority, electric utility, or electric
8 consumer, to reopen, force, the renegotiation of, or
9 interfere with the enforcement of power purchase
10 contracts or arrangements in effect on the effective
11 date of this Act between a qualifying small power
12 producer and any electric utility or electric
13 consumer, or any qualifying cogenerator and any
14 electric utility or electric consumer.

15 (b) To affect the rights and remedies of any
16 party with respect to such a power purchase con-
17 tract or arrangement, or any requirement in effect
18 on the effective date of this Act to purchase or to
19 sell electric energy from or to a qualifying small
20 power production facility or qualifying cogeneration
21 facility.

22 **SEC. 305. EFFECTIVE DATE.**

23 This title shall take effect on December 15, 2003.

1 TITLE IV—ENVIRONMENTAL PROTECTION**2 SEC. 401. STUDY.**

3 The Environmental Protection Agency, in consulta-
4 tion with other relevant federal agencies, shall prepare and
5 submit a report to Congress by January 1, 2000, which
6 examines the implications of differences in applicable air
7 pollution emissions standards for wholesale and retail elec-
8 tric generation competition and for public health and the
9 environment. The report shall recommend changes to fed-
10 eral law, if any are necessary, to protect public health and
11 the environment.

